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JULIEN T. DAVIES

Memorial of a Leader of the Bar

BY

JOSEPH S. AUERBACH

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JULIEN T. DAVIES

*Memorial of a Leader
of the Bar*

JULIEN T. DAVIES

Memorial of a Leader of the Bar



WHEN asked to prepare a Memorial of Julien T. Davies, I at first thought that our peculiarly intimate association as partners and friends for more than a quarter of a century might cause me to write of him too markedly under the promptings of sentiment, and that, therefore, another selection would be preferable. Nevertheless, conference with friends, and the reflection that not merely activities in Court and office are to be recounted of a Leader of the Bar who drops out of the procession of life, have persuaded me that our comradeship need not interfere with preparation of a tribute fitting to his professional eminence, responsive citizenship and exemplary character.

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In Mr. Davies, Judge Henry E. Davies reared a son who was to add distinction to the name of the father. And by reason of the precept and example of that father—whose memory to him always was a great possession—of his own intellectual equipment and the ennobling traditions of our profession, Mr. Davies united in himself those rare qualities which made him the fearless advocate and the trusted as well as resourceful adviser. Along with an almost clairvoyant insight into complicated questions of law and fact for elucidation of the truth, he had not alone an ardent sense of fidelity to the client, but of honorable obligation to the Court, of which he never failed to remember it was his privilege to be the candid officer. Never did nobleman appraise more jealously the proverbial responsibilities of rank, than did Mr. Davies the compelling ideals of his high calling. To be in doubt as to the propriety of a course of conduct was to be resolved against it; and his whole life was a rebuke of the shallow

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cynicism that the law is what is boldly asserted and plausibly maintained.

That such devotion to his profession was with him a chief article of faith, no better illustration can be given than by a quotation from his address before the Bar Association of the City of New York on the fiftieth anniversary of its existence. On that memorable occasion he was one of the few surviving founders of the Association. And though ex-Senator Root and John Proctor Clarke, the Presiding Justice of our Appellate Division, were the other speakers, the address of Mr. Davies did not suffer by comparison with what they so acceptably said.

It is difficult to conceive what could be taken from or added to this eulogy without detracting from its dignity and fitness.

In dwelling upon the work of this Association during the past fifty years in maintaining the honor and dignity of the profession of the law, naturally there arises before us some mental conception of the characteristics of that honor and dignity. Whether one contemplates a lawyer's life and work

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from the standpoint of over fifty years' experience or a few months' trial, each member of our profession must feel that he has been set apart from the mass of his fellows for a peculiar and distinct career that demands adherence to the highest standard of conduct. It is not essential to claim by comparison any superiority in usefulness or distinction of lawyers in general over those who have chosen other spheres of activities. Fifty or a hundred years ago, such a claim might have been put forth with greater force than now. The greatly increased productivity of the world, due to inventions and use of machinery and vastly greater facilities of communication and transportation, has led to such distributed possession of wealth and to such ease in its acquisition, that the brain-worker, who, if he is to be actually a lawyer, and not a broker in legal business, must pursue thought for thought's sake, and cannot accumulate largely, and in a community where the power of money is held as most desirable and admirable, must necessarily yield in importance. It is enough for us to claim that the peculiar features of our calling give to it all the honor and dignity that human nature requires for complete satisfaction. First and foremost among those characteristics is the attitude of sympathetic helpfulness that the counselor must assume towards him who applies for aid, who is never allowed to depart without receiving some thought that will assist in the disposition of the problem presented. Then comes the intellectual pleasure of the search for truth,

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for the true solution of the difficulty in the light of reason and precedent, and the glow of satisfaction with which a conclusion is reached, that satisfies the searcher and that can be defended with the strength of him who is thrice armed "who has his quarrel just."

Who can be indifferent to the charm of exercising one's persuasive and convincing powers, be they ample or limited, before court or jury, or, as more frequently occurs, upon client, associate or opponent, in the give and take of consultation? Always as a sworn officer of the Court, always, whether in argument, trial of a cause or consultation, engaged as part of the machinery for the administration of justice, always engaged in the furtherance of composition of differences and the avoidance of private warfare, always acting as a helper and a healer, what more honorable and dignified course of life can be pursued than that to which we have fortunately devoted ourselves? In recognition of all this, was this Association formed, has it for fifty years pursued its useful career, and God willing, may it be continued by our successors for the years to come.

From the day almost of his majority and admission to the Bar he was a familiar figure in the Court room, before courts of original jurisdiction and Appellate tribunals, where, not only by profound

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knowledge of legal principles and mastery of the facts, but by a general culture, he was enabled to present the finished as well as lucid argument. Nor should such an attainment be lightly passed over, for no one can justly claim that in respect of literary quality, the oral argument of counsel to-day is, as a rule, on a level with that of the advocates who were Mr. Davies' contemporaries. While he never indulged himself in rhetorical, perfervid utterance, he was truly eloquent in the phrase of vigor, and precision. Understanding full well that the language of formal argument is not wholly appropriate for colloquial interchange of views, he understood, also, that slovenly speech was to be abhorred always, and that one who persisted in a cheap expression in or out of court was likely to voice only cheap thoughts. More than once he and I have discussed the well-nigh scandalous consequences of the prevailing slothfulness in these respects. The *laudator temporis acti* or the panegyrist of *aetas parentum* is prone

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to unduly eulogistic estimate of the past. Yet concerning the ungrateful disregard we exhibit for our priceless inheritance of the English language, there is little likelihood of any statement approaching to exaggeration. And, we of the Bar, if quite candid with ourselves, must admit that the ambitious address of many a trained lawyer to-day often seems to strive for rivalry and invite favorable comparison with the jargon and slang of the street corner.

Not infrequently we are called upon to listen to the remark, for which no slight justification exists, that Judges have become intolerant of oral arguments—so infelicitously often does the lawyer acquit himself. When, however, the forceful, scholarly presentation is heard, the Court can be relied upon to welcome the novel experience, as a substantial aid in promoting a right determination of the cause and the preparation of the convincing opinion. Our universities boast of the many things they are teaching and

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of the superiority of the present-day university curriculum to that of the College of former years. Yet in the essential matter of training the undergraduate for disciplined expression they are lamentably deficient. Although none knows better than the lawyer that form is of the substance of things—to the extent of determining even the constitutionality of statutory enactment—he, at times, gives little or no adequate heed to its influential effect upon the written or oral argument.

It was an equal pleasure to hear Mr. Davies in or out of Court, with his graceful, unostentatious speech made possible by a generous vocabulary. For declamation was not less foreign to his nature than that which is popularly characterized as special pleading. Yet he never permitted himself to believe that a cause, however worthy, would necessarily argue itself or his hearer to conclude that engaging conversation was a lost art. In professional work he was not influenced, much less controlled, by promptings of

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vanity as to his personal achievement. He did not even aim to feature himself as the accomplished advocate, being willing to sink his individuality in the cause he was urging; and, accordingly, victory for the client rather than applause for himself was the end sought for and so frequently gained.

It is unnecessary to enumerate all the important cases in which Mr. Davies was engaged before the Courts of this State or the Federal Courts or to speak in detail of his other professional activities. A few illustrations will suffice.

In the early years of his practice he was required to give much of his time to the searching of titles to real estate. He was a pioneer, however, in recognizing that such work could be more acceptably done by corporations created to guarantee, as well as search titles, and he accordingly participated in the organization of the Title Guarantee & Trust Company, of which he became, and continued until his death, to be a prominent Director.

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His notable work in matters of taxation attracted attention at the beginning of his career, and he was the author of an authoritative book on the subject. He conducted also many important litigations in this field, involving particularly taxation of the shares of National Banks; and one of the leading cases argued by him in the United States Supreme Court—*Hills v. Exchange Bank*—established the right of stockholders to deduct indebtedness from the assessed value of their shares.

He was Counsel in important cases in the United States Supreme Court involving the subject of insurance, among which are:

Mutual Life Insurance Co. *v.* Cohen,
179 U. S.

Phinney *v.* Mutual Life Insurance Co.,
178 U. S.

Other well-known cases which he argued in the Supreme Court of the United States, and in other Courts of Appeal, are:

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Rogers v. New York & Texas Land Co., 134 N. Y.

Matter of New York & Long Island Bridge Co., 148 N. Y.

Havana Central Railroad v. Knickerbocker Trust Co., 198 N. Y.

Knickerbocker Trust Co. v. Evans, 188 Fed.

Brushaber v. Union Pacific R. R. Co., 240 U. S.

Upon the failure of the firm of Grant & Ward, in 1884, of which ex-President Grant was one of the chief victims, he was appointed Receiver of its assets, a position which he held, and a trust which he discharged with signal credit.

It will be seen from this brief reference to his professional life that Mr. Davies was a general practitioner, in the old and honored sense of the term. His identification with the vast number of suits involving claims against the Manhattan Railway Company for damages by owners of property abutting on the streets occu-

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pied by the elevated structures should, however, be specially referred to. To carry on this exacting litigation he created a special law department, of which he was the active head; and as an illustration of the volume of the work, it should be added that for a long period the calendar of our Supreme Court of original jurisdiction was congested with these cases, and more than two thousand of them were tried at Special and Trial Terms, and nearly one thousand Appeals were argued.

The quality of the work, too, was on a par with its volume, and it is quite safe to say that but for his brilliant efforts in restricting the amounts recovered against the Company, its control would have passed permanently from its owners into the hands of judgment creditors. He obtained a decision from the Court of Appeals upholding the contention of the Company, that benefits to abutting property should be considered in the estimation of consequential damages. In

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another case, the correctness of the insistence by the Company to a prescriptive right to maintain its structures in the streets, after twenty years of unchallenged and adverse possession, was finally established. In still another case, the judgment of the Court below denying the claim of the abutting owner to an absolute injunction against a third track upon the elevated structure was affirmed, although it had been held that the Commissioners who authorized and approved of the third track had acted in excess of their powers. Again, he succeeded in sustaining, against the formidable objections of dissenting stockholders, the validity of the so-called Tripartite Agreement which had made possible the organization and continued existence of the Company.

Nor should reference to his identification with the resumption of business by the Knickerbocker Trust Company of New York be omitted, for the circumstance was not only of vital consequence

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to the community, but in a real sense to the country generally.

In 1907, the Knickerbocker Trust Company, with scores of millions of deposits, had failed and a national financial panic, which the suspension precipitated or materially contributed to, ensued. It was assumed by the public that the suspension would go the way of similar suspensions, and that the Receivers would distribute what remained of the assets to depositors and stockholders. A Committee on Resumption, however, was formed by prominent directors and other persons in the community, and Mr. Davies, whose firm had been Counsel to the Company, was selected as its chief adviser. Very largely by reason of his indomitable patience which partook of genius, his tact and untiring and creative energy, resumption of business by the Company was brought about, to be followed by consolidation with the Columbia Trust Company—the new company being styled the Columbia-Knickerbocker Trust Company and after-

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wards the Columbia Trust Company. There had been no instance in the history of financial institutions where a like failure was not followed by a perfunctory liquidation of the embarrassed company.

Though I have spoken of Mr. Davies' courage, its unique quality may well be emphasized; for it was not only courage in the practice of his profession but in his daily walk of life. He and fear kept no company. And it can be as truly said of Mr. Davies as it was said of Mr. Choate by Mr. Root in his illuminating Memorial Address before the Bar Association of the City of New York: "He was wholly free of any impediment of timidity. This quality did not impress one as being the kind of courage which overcomes fear, but, rather, a courage which excluded fear. With him, no such emotion as fear seemed to exist."

Once in a case of more than ordinary importance, wherein our firm represented the defendant corporation against which a mortgage lien was being foreclosed by

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one of the prominent trust companies of this city, a well-known business man had been agreed upon as Receiver of the property by the respective parties. A disturbing rumor made Counsel solicitous lest an equally well-known politician of not altogether savory record be appointed by the Court. It was determined, therefore, to discontinue the action and thus avoid the possibility of any such calamity. Accordingly, Mr. Davies, in company with the Counsel for the Trust Company, asked of the Judge before whom the application came, what was the clear right of the litigants, that an order of discontinuance be signed forthwith. The Judge hesitated, almost to the extent of declination, to carry out the agreement, and his whole attitude was fairly substantial confirmation of the rumor. Mr. Davies pressed the point and—announcing an intention to remain until the application had been granted—admonished the Judge in solemn, unequivocal language that further hesitation was not prudential.

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Whereupon the Judge, exhibiting no little unseemly display of temper, signed the order with reluctant pen and flung rather than handed it to Mr. Davies.

He had, too, another kind of courage, such as few men had ever possessed—that imperturbable, stoic fortitude which rises superior to the grief which so often dries up the springs of endeavor and even hope. That spurious philosophy of La Rochefoucauld, which triumphs over past and future evils but which permits present evils to triumph over it, was no part of Mr. Davies' creed of life. Three of his children died in their youth, then Mrs. Davies, and later two grown sons, one a member of our firm and the other a banker, after the torture of long illness, and last, a daughter very dear to him. Yet under such cumulative affliction he did not falter but found tranquillity, and it may have been solace, in the stern summons of duty. And at the end there was but one child—a beloved daughter—to follow him to the grave. Surely life to Mr. Davies

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was in some respects a very grim business.

Tenacious in receiving recognition of what was due him—over-tenacious, perhaps, from the point of view of some modern-day loose thinking on the subject—he was reciprocal in this towards others. For no persons, however humble of position, needed to plead with him for their rights, since one of the joys of his life was to accord such recognition without any plea. Once an office boy in the employ of our firm had been called to rather summary account by Mr. Davies for some supposed neglect or misconduct. It transpired that the boy was not blameworthy and I mentioned the fact to Mr. Davies, who thereupon sent for him, and, on learning the facts, not only apologized to the boy as to an equal, but criticized him because he had not on the first occasion insisted upon stating the facts. Of uniform courtesy to persons in his own walk of life, Mr. Davies never neglected to extend to all about him the little amenities

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of life which so many of us are disposed to forget. He loved, of all things, to award merited praise, and he would have been as willing to pick a pocket as to appropriate credit not belonging to himself. Nor did he ever fail of thoughtfulness to those who had ministered to his success or comfort; and to the employees of his office and of his household he made by Will generous bequests, varying with the terms of their service.

No worthy appeal to which he was able to respond was ignored; and this generosity was of that higher quality which gives abundantly of one's self. For not a few well-known lawyers of to-day can attribute some of their repute at the Bar to the fact, that Mr. Davies not only pointed out to them in youth the prudent way, but in a true sense, through sympathetic, stimulating counsel, took them by the hand and went with them part of the journey. Moreover, his abounding charity was such, that in all my years of intimacy with him I never knew him wittingly to

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harbor an unkind thought or a petty grievance or to utter an ungracious word.

He had no more liking for professional altruism than for any other manifestation of pretense, nor did he crave a specious popularity gained so often at the sacrifice of one's self-respect. And though no one more than he loved the exhilaration of intercourse with friends, solitude for him was peopled by a goodly company of congenial thoughts. A man of sentiment, sentimentality was repellant to him. Spiritual in thought and often a dreamer of quickening dreams, he was practical always in the best sense; and none better than he realized that "while arrows are to be aimed at the stars, they can at the same time be shot in directions likely to transfix and bring down something for the urgent needs of earth." Accordingly he was able to say with Walt Whitman:

I am afoot with my vision.

A well-balanced man, he attained to a discriminating judgment as to men and

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things which often seemed unerring, and conference with him was a kind of inspiration to his associates. Devoid of sympathy or even tolerance for new-fangled notions, with little or nothing but novelty to justify their currency, he was progressive in thought and deed, whilst holding fast always to the principles and institutions which had survived the discerning test of Time. Yet if I were asked to feature his one distinguishing trait of character it would be his unswerving love and passion for the Truth, with which he would tolerate no paltering and no compromise. That with him was a religion.

When past middle life Mr. Davies was warned that his impaired physical health due to over-work was such that he must, if he wished to prolong his days, take up some diversion which would compel him to be out of doors. Thereupon he became an expert shot and ardent fisherman; and thereafter we, now and then when in reprehensively facetious mood, exchanged the view that in man's Consti-

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tution, too, there should be a Thirteenth Amendment. Unlike so many intellectual men that yield to enslaving demands upon their requisite leisure, Mr. Davies drank deep of the miraculous Chalice proffered us by Nature, wherefrom we may, if we will, receive wisdom and strength and high resolve, with the saving grace of serenity and joy. And many were the hours of delight we passed profitably together as industrious idlers in wading a trout brook or on a salmon river, in the duck blind or with gun and dog in the field. He heeded well the sanity of the injunction:

To mix his blood with sunshine and to take
The winds into his pulses.

According to his frequently voiced hope he continued always actively with professional work, dying in the harness of routine, as Emerson expresses it; and to the last his mental powers and resourcefulness remained unimpaired, whether in the controversy of Court Room, in advice

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to client, or in consultation with associates or opponents. Nor did the advancing years bring to him any of the gruesome thoughts catalogued in that uninviting, spiritless poem of Mathew Arnold, *Growing Old*. On a professional errand in Boston, he was stricken down with pneumonia; and afterwards, when near to recovery, a clot of blood gathering at the knee—the recurrence of an old ailment—was released, and he died of embolism of the heart. It was at Phillips House—an Annex of the Massachusetts General Hospital—overlooking the Charles River Embankment and almost out of doors with window raised and to the song of birds, that the end came in the fullness of his fruitful years.

His burial, too, was with the benediction of what Henley calls a shining peace. Of all sports fishing, perhaps, was most appealing to him; and one of our firm, who had gone in advance of others with the flower-car to the family cemetery at Fishkill, witnessed this: An old fellow

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of the vicinage, with fishing basket—not the creel—on his arm, and a pole—not a rod—over his shoulder, and in typically homely attire, was, to all appearance, returning from some neighboring trout stream. After a significant pause he turned and preceded the hearse to the grave; and then with sympathetic mien and solemn step, he walked away. Perhaps it may be thought by some that this little journey of the old fisherman merely afforded him a short cut to his home, but I prefer rather to believe he was present there to wish a kindred spirit Good Luck! And when I asked of the Rector of Grace Church—who had read the committal service and the all-embracing Gladstone prayer, to the accompaniment of the song of a wood thrush on a near-by tree—whether he did not agree with me that Mr. Davies, in some way, somewhere, must have known of this touching incident, he expressed himself as sure it was so.

His life was one of unremitting energy—he would not wish me to say toil—and

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fine achievement, with many honors and not a little grievous sorrow. He contributed to the common weal from the day when, deserting his studies, he enlisted in the Civil War, to become one of the veterans of the Grand Army. Moreover, he manifested this virtue as I once said, in a Memorial Address, the late Bishop Henry C. Potter had manifested it—not only during emergencies when the volunteers are many, but likewise at ordinary times when it seems often necessary to draft even men of conscience and power into the public service. For though he neither filled nor sought to fill public office, there was no cause which made for more salutary political or social conditions that was not sure of Mr. Davies' cordial alliance and heartening co-operation. Throughout his life he fought a good fight and kept the faith; and on the monument over his grave is to be the Requiem of Stevenson, which seems especially written for him, and which he loved so much in its exquisite, stirring Homer-music setting.

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Incapable intellectually of giving credence to the forbidding orthodoxy of yesterday, he was reverently religious; and his abiding trust in an eternal righteousness was disquieted neither by doubt nor by what must have seemed to him, at times, the untempered dispensations of Fate or Providence. He never permitted his sense of civic responsibility to be daunted by public apathy or error; with reassuring word and hand he lifted up many a man that had stumbled and was in sore need; of the cause of good government, under indictment by blatant or insidious demagogy, he was the inspiring advocate; he added distinction to a great profession; and after his work was over and he was able to leave, to that profession and the community and to those who loved him so much, the proud legacy of an unsullied name and an unimpeachable example of right thinking and right living, he laid down his life, as the Requiem of Stevenson says, with a will.

THE END

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